In the High Court of Punjab and Haryana at Chandigarh

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C.W.P.No.5874-CAT of 2005

Date of decision:20.11. 2006

Manjit Kumar ..Petitioner

Versus

Union of India and others .Respondents

Coram: **Hon'ble Mr.Justice J.S.Khehar**
Hon'ble Mr.Justice S.D.Anand

Present: Mr.I.D.Singla,Advocate
with Mr.Vivek Singla,Advocate
for the petitioner
Ms.Renu Bala,Advocate
Central Government Standing Counsel
for the respondent Nos.1 to 4.

J.S.Khehar,J.(Oral)

The petitioner was appointed as an Extra Departmental Pecker by an order dated 11.9.1997. After his induction into the service, it is his contention that his work and conduct remained satisfactory. After the lapse of about 4-1/2 years, a show cause notice was issued to the petitioner dated 28.2.2002, wherein he was informed that his appointment was made as a matter of mistake, when the name of the petitioner was selected out of the names sponsored by the Employment Exchange. It was asserted that the petitioner had secured only 300 marks in the matriculation examination, whereas another candidate (Deepak Kumar) who had also been sponsored by the Employment Exchange along with the petitioner had secured 316 marks. On the basis of the marks obtained by the two candidates in the matriculation examination, it was sought to be concluded that Deepak Kumar had a superior right for appointment against the post of Extra Departmental Pecker. After the petitioner submitted his reply to the show cause notice dated 28.2.2002, the respondents by an order dated 30.4.2002 terminated his services by asserting that his appointment was irregular. The appeal filed by the petitioner against the aforesaid order was dismissed on 4.3.2003.The petitioner challenged the order passed by the

respondents by filing Original Application No.493/PB/2003 before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh(hereinafter referred to as the Administrative Tribunal). The Administrative Tribunal dismissed the application filed by the petitioner by an order dated 15.4.2004.

Through the instant writ petition, the petitioner has impugned the order dated 30.4.2002 passed by the respondents, the appellate order dated 4.3.2003,as well as the order dated 15.4.2004 passed by the Administrative Tribunal.

Learned counsel for the petitioner relies on the decision rendered by the Apex Court in Union of India and others Versus Bikash Kuanar JT 2006 (12) SC 578, and has vehemently contended, that the controversy adjudicated upon in the aforesaid judgment rendered by the Apex Court was exactly similar to the one raised in the instant writ petition,namely, that Bikash Kuanar's case (supra) relates to appointment against the post of Extra Department Delivery Agent (whereas the instant writ petition pertains to appointment against the post of Extra Departmental Pecker). In the case decided by the Apex Court , the respondents had set aside the selection and appointment of Bikash Kuanar on the same basis, as in the instant case, namely, that he had acquired lesser marks in the matriculation examination viz another candidate who had participated in the same process of selection. Despite opportunity afforded, learned counsel for the respondents could not distinguish the controversy adjudicated upon by the Apex Court in Bikash Kuanar's case (supra) from the controversy raised by the petitioner in the instant case.

In view of the above, and following the law laid down by the Apex Court in Bikash Kuanar's case (supra), we are satisfied that the impugned orders dated 30.4.2002, 4.3.2003 passed by the respondents, and the order dated 15.4.2004 passed by the Administrative Tribunal deserve to be set aside, the same are accordingly set aside. Resultantly, the petitioner shall be deemed to be continuing in the service of the respondents. He shall also be entitled to all consequential benefits.

The instant writ petition is disposed of accordingly .

(J.S.KHEHAR)
JUDGE

November 20,2006
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(S.D.ANAND)
JUDGE